

TAJOB REALTY SDN. BHD.

a

v.

CITIBANK N.A. & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR

SITI NORMA YAAKOB J

[SUIT NO. F 22-282-86]

b

3 OCTOBER 1987

CIVIL PROCEDURE: *Application to strike out action - Validity of land charge, whether ultra vires Memorandum and Articles of Association - Internal management and third party notice - Whether plaintiff company prejudiced.*

c

Three separate suits have been filed in relation to a dispute over a piece of land belonging to the plaintiff company which had been charged to Citibank N.A. Singapore (the 1st defendant) to secure banking facilities of S\$7.3 million for the benefit of another company called Garu Timber Sdn. Bhd. (the 2nd defendant)

The first suit was filed on 14 December 1985 by the 1st defendant to have the caveat lodged by one Kwok Chee Loong, one of the two directors and shareholders of the plaintiff company, removed.

d

Then on 9 May 1986 the plaintiff company filed a suit against both defendants followed 6½ months later by another suit, again, against both defendants. In both suits the plaintiff company sought to declare the charge created over its property in favour of the 1st defendant null and void as being made without its authority and also *ultra vires* the memorandum and articles of association. The plaintiff company also alleged that the charge was made in favour of a company that does not exist in Malaysian law.

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Held:

[1] The plaintiff company was not in any way misled or prejudiced by the error in naming the 1st defendant (the Singapore branch office of Citibank N.A., a company incorporated in the United States of America) a Malaysian company.

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[2] The wrong description in name has not in any way invalidated the charge. The plaintiff company cannot run away from this fact even in the absence of oral evidence as to the true identity of the chargee as the affidavits clearly show that Citibank N.A. in Singapore to be the chargee.

[3] The amended statements of claim filed by the plaintiff company against the 1st defendant in the latter 2 suits are frivolous and vexatious and the learned Judge allowed the 1st defendant's applications in both suits with costs and ordered the writs and statements of claim against the 1st defendant in both actions be set aside.

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[Judgment for 1st defendant with costs.]

Legislation referred to:

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Companies Act 1965, ss. 108(1), 110(1)

Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (c), (d)

For the plaintiff/respondent - Lim Kean Chye (Ker Kim Tim with him); M/s: Baharuddin Bernatt Tan & Ker

For the 1st defendant/applicant - B.R. Seth; M/s. Shearn Delamore & Co.

For the 2nd defendant - M.S. Murthi; M/s. Murthi & Partners

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JUDGMENT

Siti Norma Yaakob J:

Three separate suits have been filed in relation to a dispute over a piece of land belonging to Tajob Realty Sdn. Bhd. which had been charged to the Citibank N.A. to secure banking facilities of S\$7.3 million for the benefit of another company called Garu Timber Sdn. Bhd.

b

The first of such suits is O.M. F 82/85 which was filed on 14 December 1985 and it is an application by Citibank N.A. to have the caveat lodged by one Kwok Chee Loong, one of the two directors and shareholders of Tajob, removed.

c

Then on 9 May 1986, Tajob filed C.S. F 22-282-86 against Citibank N.A. and Garu Timber Sdn. Bhd. followed 6½ months later by the filing of the third suit, C.S. F. 22-416-86 on 24 November 1986 by Tajob against Citibank N.A. Singapore and Garu Timber Sdn. Bhd. The Prayers sought in these two suits are similar in that Tajob seeks to declare the charge created over its property in favour of Citibank N.A. null and void as being made without its authority and is also *ultra vires* the memorandum and articles of association. Tajob also alleges that the charge was made in favour of a company that does not exist in Malaysian law.

d

The applications that were before me and are now the subject matter of the appeals in the latter two suits relate to the applications by Citibank N.A. to have the writs and statements of claim in the two latter actions struck of under O. 18 r. 19(1), (a), (b), (c) and (d) and under the inherent jurisdiction of the Court.

e

When Tajob created the charge in favour of Citibank N.A. on 29 March 1984, there were 3 important documents that Citibank N.A. relied on to ascertain Tajob's authority to charge its property. The first of such documents is Tajob's memorandum and articles of association. Clause 5, 31 and 53 of the memorandum gave Tajob wide powers to carry on and transact all kinds of guarantee business and reading all these 3 clauses together, it is clear that the Memorandum empowers Tajob to create the charge in furtherance of its business activities. Hence the question of *ultra vires* is not relevant at all.

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Next to the memorandum and articles of association is the resolution adopted by Tajob on 7 March 1984 at a board meeting held the same day authorising it to charge its property to secure the loan facilities of S\$7.3 million to be granted by Citibank N.A. in Singapore to Garu Timber Sdn. Bhd. The resolution also authorised Mr. Lee Che Hing, the other director the shareholder to sign all legal documents relating to the loan and charged documents on behalf of Tajob. It is this resolution that is now questioned by the other director and shareholder of Tajob, Mr. Kwok Chee Loong as being obtained fraudulently as there was no board meeting held on 7 March 1984 where such a resolution could have been adopted.

*g**h*

The business of convening a board meeting and the passing of the resolution are strictly the internal affairs of Tajob for which Citibank N.A. is not privy to. On the face of it, the resolution adopted by Tajob and 7 March has been properly passed and there is nothing on it to suggest to Citibank N.A. that it was obtained otherwise. Citibank N.A. is not concerned nor is it required to enquire whether there has been any sharp practices engaged by the 2 directors of Tajob as to render the resolution invalid. Any allegations of impropriety in the passing of the resolution by Tajob, which is an internal affair of the company, can only be levelled against its directors and not against citibank N.A., the innocent third party. If indeed there had been such sharp practices, there is nothing in the affidavits to suggest that Citibank

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N.A.had been privy to or a party to such impropriety.

The chargee in this case is Citibank N.A. of No. 5, Shenton Way, UIC Building, Singapore 0106, a branch of Citibank N.A., a company incorporated in the United States of America with branch offices all over the world including the one in Singapore. It is also clear that it was the Singapore branch of Citibank N.A. that provided the loan facilities and Tajob had created the charge in favour of Singapore office. There is therefore no mistake as to the identity of the chargee and Tajob has clearly admitted this in its affidavit dated 24 April 1987. However, in the charge documents, the chargee has referred itself as “sebuah syarikat yang ditubuhkan di Malaysia dan mempunyai pejabatnya yang berdaftar di Shenton Way Branch, UIC Building, No. 5, Shenton Way, Singapore 0106”. Clearly this description is wrong and Tajob contends that the charge is created in favour of the company that does not exist under Malaysian law. However, what I consider to be relevant here is whether the wrong description in name has in any way invalidated the charge. I answer this in the negative as Tajob has not been in any way prejudiced by the wrong description in name. This is borne out by the particulars given by Tajob in form 33 and form 34, pursuant to s. 108(1) and s. 110(1) of the Companies Act 1965. Tajob cannot run away from this fact even in the absence of oral evidence as to the true identity of the chargee as the affidavits clearly show that Citibank N.A. in Singapore to be the chargee.

By filing these 2 actions, Tajob is clearly confusing the whole issue and creating a duplicity of actions. Interestingly, Tajob is not alleging any fraud in any of the two actions and it seeks to justify its omission by stating that it was not aware of the board meeting and the existence of the resolution adopted on 7 March 1984 at the time of the filing of the statements of claim. This cannot be right as the originating motion F 82/85 filed earlier in point of time to the 2 civil suits made reference to such a meeting and a copy of the resolution has also been exhibited to the affidavit in support of originating motion.

For the reasons that I have given above, it is clear that the amended statements of claim filed by Tajob against Citibank N.A. in the latter 2 suits are frivolous and vexatious and I accordingly allowed Citibank N.A.’s applications in both suits with costs and ordered that the writs and statements of claim against Citibank N.A. in both actions be set aside.

Also found at [1987] 2 CLJ 338

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